

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 17412 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE D.P.BUCH

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1. Whether Reporters of Local Papers may be allowed : YES
to see the judgements?
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the concerned : NO
Magistrate/Magistrates, Judge/Judges, Tribunal/Tribunals?

KISHOR ALIAS BHAYO VITTHALBHAICHUDASMA

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 17412 of 2003
MS SUBHADRA G PATEL for Petitioner No. 1
Ms Mita Panchal, AGPG for Respondent No. 1-3

CORAM : HON'BLE MR.JUSTICE D.P.BUCH

Date of decision: 06/04/2004

ORAL JUDGEMENT

The petitioner has filed this petition under
under Article 226 of the Constitution of India for
appropriate writ, order or direction for quashing and
setting aside an order dated 27.10.2003 passed by

respondent No.2 under section 3(2) of the Gujarat Prevention of Anti-social Activities Act, 1985 (for short, 'the PASA Act') directing detention of the present petitioner on the grounds stated in the detention order.

2. It was alleged against the petitioner that five criminal cases for offences punishable under section 454, 457, 380, 511 and 114 of IPC have been registered against the petitioner before Kathargam police station as CR No.261/2003, 262/2003, 264/2003 and 265/2003 on 27/28.7.03, 26/27.7.03, 27.7.03, 30.7.03, and 24/25.1.03, respectively. It was alleged against the petitioner that he was involved in the commission of offence of theft in respect of certain moveable items mentioned at page 11.

3. It was also alleged against the petitioner that two statements have been given by two different witnesses saying that the petitioner was a dangerous person.

4. On the strength of the above registered offence and unregistered cases, a detention order was passed against the petitioner. Feeling aggrieved by the order of detention, the petitioner approached this court for quashing and setting aside the said order of detention. It has been contended here in this petition that the petitioner was simply involved in certain IPC offences, it cannot be said that the petitioner was a dangerous person and hence he was required to be detained. That no proper verification about the correctness and genuineness of the offence has been done and therefore also the order of detention stands vitiated. It is therefore, prayed that the petition be allowed and the order of detention be quashed and set aside.

5. On receipt of the petition, rule was issued and in response to service of notice of rule, Ms. P B Sheth, learned AGP has appeared on behalf of the respondents. I have heard the learned Advocates for the parties and have perused the papers on record.

6. During the course of hearing it has been submitted by the learned Advocate for the petitioner that the petitioner in this petition and petitioner in Special Civil Application No.16608/2003 were co-accused in all the five offences registered against them. She also states that even the statements of unnamed witnesses are also common. Therefore, the case of the petitioner is on par with the petitioner in Special C.A. No.16608/2003 which has been decided by this Court on 6.4.2004.

7. It is not much in dispute that five offences and unregistered cases stated hereinabove are against the petitioner and the petitioner in the aforesaid Special Civil Application which has been allowed today and the detention order has been quashed and set aside therein. Therefore, on the principle of parity, this petitioner is also required to be given the same treatment. Therefore, this petition is required to be allowed and the detention order in respect of the present petitioner is required to be quashed and set aside.

8. For the reasons stated in Special Civil Application No.16608/2003, this petition is allowed. The impugned order dated 27.10.2003 passed by respondent No.2 is ordered to be quashed and set aside. The detenu is ordered to be set at liberty forthwith, if no longer required in any other case. Rule is made absolute to the aforesaid extent. No order as to costs. D.S. permitted.

[D P Buch, J.]

msp